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Miscellaneous

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MISCELLANEOUS

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Although the above subject makes the cases which have been assigned to me sound unimportant, nevertheless, some heretofore undecided points of law are involved. I hope, therefore, that the title will not deceive practicing attorneys and cause them to fail to examine the cases noted herein.

Use of Writ of Habeas Corpus to Determine Sanity

In *Douglas v. Hall*,[1] the Court passed upon the question as to whether or not one adjudged insane and committed to the State Hospital, could, in an habeas corpus proceeding before another tribunal, attack the factual finding of his insanity at the time of his commitment or try the issue of his return to sanity.

The petitioner was committed to the State Hospital pursuant to the order of the Probate Court of Greenville County, which had proceeded in conformity with Section 32-912.[2] Shortly thereafter, petitioner, relying on Section 32-950.13, asked the County Court of Richland County to order his release from custody under the writ of habeas corpus. The trial judge overruled appellant's request for discharge of the writ which alleged that the petitioner had not exhausted all available administrative remedies under Section 32-930, and took testimony on the merits. He found the petitioner sane and ordered his release. From this order the Hospital Superintendent appealed.

The Supreme Court held that the State, through the Hospital Superintendent, could appeal from an order in an habeas corpus proceeding, and went on to hold that the remedies provided in Sections 32-918 to 32-926 were exclusive and adequate. It further held that Section 32-950.13, which gives one detained pursuant to Sections 32-912 and 32-915, the right to the writ of habeas corpus, did not broaden the scope of the

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1. 229 S. C. 550, 93 S. E. 2d 891 (1956).
2. Code of Laws of South Carolina, 1952. All code sections referred to will be found in this code.

writ. "It merely reaffirms that the writ is available, as it always has been, to test not the factual issue of the petitioner's sanity but the legality of the proceedings or judgment under which he was committed and is being confined."

Mr. Justice Taylor dissented since he was of the opinion that the cases relied on by the majority were not applicable as they involved individuals confined in connection with crime. He was also of the opinion that the provisions of Section 32-930 were not exclusive and that they were inadequate since a total of 52 days could elapse before a petitioner exhausted his remedies thereunder.

Civil Conspiracy

An action for conspiracy based on a union shop contract resulted in summary judgment for the defendants in *Sams v. Brotherhood of Railway and Steamship Clerks.*[3] The contract was entered into pursuant to the provisions of 45 U. S. C. A., Section 152 Eleventh. The appellant was a member of the brotherhood but failed to pay dues, resulting in his dismissal after formal hearing from which he did not appeal.

The Court of Appeals of this Circuit stated that the union shop contract was valid under federal law and that South Carolina law did not render it invalid. Moreover, the court intimated that had the South Carolina Right to Work Law, Section 40-46, been in effect at the commencement of the action, that it would have had to give way to the federal statute regulating interstate commerce. This is sound law since railroad employees do not come within the provisions of the Taft-Hartley Act[4] in which state right to work laws are recognized as being valid.

Mechanics' Liens

The Supreme Court in *Lowndes Hill Realty Co. v. Greenville Concrete Co.*[5] held that service of a Certificate of Mechanic's Lien upon a landowner after it was filed in the office of the Register of Mesne Conveyance was sufficient compliance with Section 45-254 in order for the lien to attach upon the real estate involved. The lower court along with the Master had held that the certificate required by Section 45-259 related only to the dissolution of liens obtained under Section 45-254,

3. 233 F. 2d 263 (1956).
4. 29 U. S. C. A. 182; 45 U. S. C. A. 152 Eleventh.
5. 229 S. C. 619, 93 S. E. 2d 855 (1956).

and that notice pursuant to Section 45-254 must also be given in order to perfect a mechanic's lien.

Mr. Justice Legge reviewed the legislative history of the statutes involved in order to point out why notice must be given the owner of the furnishing of materials and a certificate of lien be recorded and served upon the owner. He concluded that so long as the certificate of lien contains information apprising the owner " . . . of the furnishing of such labor or material and the amount or value thereof . . . ," service of the certificate upon the owner supplies the requirement of "notice" set forth in Section 45-254.

Of course it is elementary that the certificate must be filed within 90 days after the laborer or materialman ceases to labor on or furnish labor or materials for such building or structure as required by Section 45-259. However, *notice* should be given the landowner as soon as possible since " . . . his liability under the lien is limited to the balance due by him to the prime contractor at the time he receives the notice."

Attachments

The case[6] about to be discussed deals with procedure under an attachment statute; hence, it may be discussed also under the general subject, Practice and Procedure.

Plaintiff attached certain property allegedly belonging to defendant, a foreign corporation. A third party claimed title to the property and the plaintiff contested such claim. The defendant then made a motion to dismiss on the ground of non-ownership of the property. The plaintiff gave notice that it wanted an issue framed pursuant to Section 10-929. The trial judge heard the motion to dismiss first, and based upon the affidavits relevant thereto, held that the property belonged to the intervening third party and dismissed the action against the defendant.

The Supreme Court held that there was a substantial question as to ownership of the property and stated that " . . . *where there is intervention and a substantial question as to ownership is presented,* the better practice is to defer final action on the motion to dismiss until the intervenor's claim is determined. . . . Any other procedure could result in giving the intervenor the privilege of having the question twice litigated. . . . "

6. Allen v. Island Co-operative Services Co-operative Association, Ltd., 229 S. C. 313, 92 S. E. 2d 851 (1956).

The court further held that the plaintiff had not waived its procedural rights by replying by affidavit to the intervenor's verified claim and to affidavits by defendant in support of its motion to dismiss.

Religious Societies

In *Bramlett v. Young*,[7] the Court following its prior decision in *Wilson v. Presbyterian Church of John's Island*,[8] held that the minority faction in a church of the associated type who remained loyal to the doctrines and organization of the church were entitled to possession of the church property and to an injunction against the majority to prevent interference with the minority's possession.

The Court reviewed the cases from this jurisdiction and several from other jurisdictions including the famous case of *Watson v. Jones*,[9] decided by the United States Supreme Court.

Very recently a thorough casenote on the subject by Miss Winifred Wills appeared in this publication.[10] It involved a case arising in a church, congregational in nature, but a good review of the three categories into which problems arising due to schisms or factions within an ecclesiastical body is presented. The same result was reached in the case noted which was decided by the Supreme Court of North Carolina.

7. 229 S. C. 519, 93 S. E. 2d 873 (1956).
8. 19 S. C. Eq. 192, 2 Rich. Eq. 192 (1846).
9. 13 Wall. 679, 20 L. Ed. 666 (1871).
10. 7 S. C. L. Q. 670 (1955), which noted Reid v. Johnston, 241 N. C. 201, 85 S. E. 2d 114 (1955).